

HOUSE BILL No. 1154

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-9-35.

Synopsis: Wayne County food and beverage tax. Authorizes Wayne County to adopt a food and beverage tax. Provides that the tax may be used to: (1) encourage conventions, visitors, and tourism; (2) encourage and promote economic development; or (3) pay debt service for a tourism or economic development project.

Effective: July 1, 2005.

Saunders, Hoffman, Pflum

January 6, 2005, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1154

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-9-35 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]:

4 **Chapter 35. Wayne County Food and Beverage Tax**

5 **Sec. 1. This chapter applies to a county having a population of**
6 **more than seventy-one thousand (71,000) but less than seventy-one**
7 **thousand four hundred (71,400).**

8 **Sec. 2. Except as otherwise provided in this chapter, the**
9 **definitions in IC 36-1-2 apply throughout this chapter.**

10 **Sec. 3. As used in this chapter, "beverage" includes an alcoholic**
11 **beverage.**

12 **Sec. 4. As used in this chapter, "bonds" has the meaning set**
13 **forth in IC 5-1-11-1.**

14 **Sec. 5. As used in this chapter, "department" means the**
15 **department of state revenue.**

16 **Sec. 6. As used in this chapter, "economic development project"**
17 **has the meaning set forth in IC 6-3.5-7-13.1.**

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1 Sec. 7. As used in this chapter, "food" includes any food
2 product.

3 Sec. 8. As used in this chapter, "gross retail income" has the
4 meaning set forth in IC 6-2.5-1-5.

5 Sec. 9. As used in this chapter, "obligations" has the meaning set
6 forth in IC 5-1-3-1(b).

7 Sec. 10. As used in this chapter, "person" has the meaning set
8 forth in IC 6-2.5-1-3.

9 Sec. 11. As used in this chapter, "retail merchant" has the
10 meaning set forth in IC 6-2.5-1-8.

11 Sec. 12. (a) After January 1 but before August 1, the fiscal body
12 of a county may adopt an ordinance to impose an excise tax known
13 as the county's food and beverage tax on transactions described in
14 section 13 of this chapter.

15 (b) Before a fiscal body may adopt an ordinance imposing a food
16 and beverage tax, the fiscal body must hold a public hearing on the
17 proposed ordinance, with notice of the time, date, and place of the
18 public hearing given in accordance with IC 5-3-1.

19 (c) This subsection does not apply to a county governed under
20 IC 36-2-3.5. If the fiscal body adopts an ordinance to impose a food
21 and beverage tax under this chapter, the county executive must
22 also adopt a substantially similar ordinance to impose the tax.

23 (d) This subsection applies to a county governed under
24 IC 36-2-3.5. If the fiscal body adopts an ordinance to impose a food
25 and beverage tax under this chapter, the county executive must
26 approve the ordinance in the manner prescribed by IC 36-2-4-8 to
27 impose the tax.

28 (e) If an ordinance is adopted under subsection (c) or approved
29 under subsection (d), the county executive shall immediately send
30 a certified copy of the ordinance to the department.

31 Sec. 13. (a) Except as provided in subsection (c), a food and
32 beverage tax imposed under section 12 of this chapter applies to
33 any transaction in which food or a beverage is furnished, prepared,
34 or served:

- 35 (1) for consumption at a location, or on equipment, provided
- 36 by a retail merchant;
- 37 (2) in the county in which the tax is imposed; and
- 38 (3) by the retail merchant for consideration.

39 (b) Transactions described in subsection (a)(1) include
40 transactions in which food or a beverage is:

- 41 (1) served by a retail merchant off the merchant's premises;
- 42 (2) sold by a retail merchant who ordinarily bags, wraps, or

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1 packages the food or beverage for immediate consumption on
 2 or near the retail merchant's premises, including food or
 3 beverages sold on a "take out" or "to go" basis; or
 4 (3) sold by a street vendor.

5 (c) A food and beverage tax imposed under this chapter does not
 6 apply to the furnishing, preparing, or serving of any food or
 7 beverage in a transaction that is exempt, or to the extent the
 8 transaction is exempt, from the state gross retail tax imposed under
 9 IC 6-2.5.

10 Sec. 14. The food and beverage tax imposed on a food or
 11 beverage transaction described in section 13 of this chapter may
 12 not exceed one percent (1%) of the gross retail income received by
 13 the retail merchant from the transaction. For purposes of this
 14 chapter, the gross retail income received by the retail merchant
 15 from such a transaction does not include the amount of tax
 16 imposed on the transaction under IC 6-2.5.

17 Sec. 15. If the food and beverage tax imposed in a county is
 18 imposed at a rate lower than the rate permitted under section 14
 19 of this chapter, the county fiscal body may adopt an ordinance to
 20 increase the county's food and beverage tax rate. The ordinance
 21 must be adopted after January 1 but before September 1 of a year.
 22 The fiscal body shall send a certified copy of the ordinance
 23 increasing the food and beverage tax rate to the department.

24 Sec. 16. (a) If no bonds, leases, obligations, or other evidences of
 25 indebtedness of a county that are payable from a food and
 26 beverage tax imposed under this chapter are outstanding, the
 27 county fiscal body may adopt an ordinance to:

- 28 (1) reduce the county's food and beverage tax rate; or
- 29 (2) repeal the county's food and beverage tax.

30 (b) An ordinance described in subsection (a) must be adopted
 31 after January 1 but before September 1 of a year. The fiscal body
 32 shall send a certified copy of the ordinance adopted under this
 33 section to the department.

34 Sec. 17. If a county fiscal body adopts an ordinance under this
 35 chapter, the ordinance takes effect January 1 of the year following
 36 the year in which the ordinance is adopted.

37 Sec. 18. A food and beverage tax imposed this chapter shall be
 38 imposed, paid, and collected in the same manner that the state
 39 gross retail tax is imposed, paid, and collected under IC 6-2.5.
 40 However, the return that is filed for the payment of the tax may be
 41 made on a separate return or may be combined with the return
 42 filed for the payment of the state gross retail tax as prescribed by

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the department.

Sec. 19. (a) The department shall notify the county auditor of a county that imposes a food and beverage tax under this chapter of the amount of tax paid in the county.

(b) The amounts received from a food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state on warrants issued by the auditor of state to the county auditor of the county that imposed the tax.

Sec. 20. A county auditor shall establish a local food and beverage tax revenue fund into which all amounts received monthly from the treasurer of state under this chapter shall be deposited.

Sec. 21. Revenue derived from a tax imposed under this chapter may be treated by a county as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the county.

Sec. 22. A county may use revenues from a tax imposed under this chapter for one (1) or more of the following purposes:

(1) To promote and encourage conventions, visitors, and tourism within the county.

(2) To promote and encourage economic development within the county.

(3) Paying debt service or lease rentals on:

(A) bonds;

(B) leases;

(C) obligations; or

(D) any other evidence of indebtedness of the county;

for a project described in subdivisions (1) and (2).

Sec. 23. The department of local government finance may not reduce a county's property tax levy by the amount of revenue received from a tax imposed under this chapter.

Sec. 24. (a) The county food and beverage tax revenue committee is established to make recommendations to the county fiscal body concerning the use of money in the fund established under section 20 of this chapter. The committee consists of the following members:

(1) One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.

(2) Two (2) residents of the county, appointed by the county fiscal body. The two (2) appointees may not be from the same

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political party.

(3) Two (2) residents of the largest city in the county, appointed by the city executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.

(4) Two (2) residents of the largest city in the county, appointed by the city fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(b) Except as provided in subsection (c), the term of a member appointed to the county food and beverage tax revenue committee under this section is four (4) years.

(c) The initial terms of office for the members appointed to the county food and beverage tax revenue committee under subsection (a) are as follows:

(1) Of the members appointed under subsection (a)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (a)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (a)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(4) Of the members appointed under subsection (a)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(d) At the expiration of a term under subsection (c), the member whose term expired shall be reappointed to the county food and beverage tax revenue committee to fill the vacancy caused by the expiration.

(e) The county food and beverage tax revenue committee is abolished on the date that an ordinance to rescind the tax imposed under this chapter takes effect.

Sec. 25. The general assembly covenants with the county and the purchasers and owners of bonds, leases, obligations, or any other evidences of indebtedness of the county payable from a tax imposed under this chapter that this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of a tax imposed under this chapter so long as the principal, interest, or lease rentals due under those bonds, leases,

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- 1 obligations, or other evidences of indebtedness of the county that
2 are payable from a tax imposed under this chapter remain unpaid.

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